

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.4795 OF 2016

ORDER:

The Civil Revision Petition is maintained impugning the order passed in I.A. No.626 of 2016 in S.O.P. No.328 of 2016 on the file of XII Additional Chief Judge, City Civil Court, Secunderabad.

2) Heard learned counsel for the revision petitioners and learned counsel for the respondents. Perused the material on record.

3) The revision petitioners herein are respondent Nos.8 and 1 to I.A. No.626 of 2016 in S.O.P. No.328 of 2016. The respondent No.1 herein is the plaintiff and respondents 2 to 7 are the respondent Nos.1, 2, 4 to 8 to S.O.P. No.328 of 2016, which is filed under Section 23 of A.P. Societies Registration Act, 2001. Pending enquiry, I.A. No.626 of 2016 is filed by respondents Nos.8 and 1 among eight respondents therein against the petitioner by showing the other respondents as proforma respondents stating that the very petition is liable to be dismissed on the threshold of non-maintainability on the ground that the bye-law contemplates for initiation of any proceeding giving of notice and deposit of the amount required to be incurred towards legal expenses and it is with the wording of no member can proceed without compliance of the same. It is invoked in saying without compliance the very petition under Section 23 of the Act no way survives. Leave about, there is no such statutory prohibition under the Act but for the bye-law initially governing the party to bind whether take away the statutory right or not apart from the same is directory or mandatory, particularly in the facts a show cause notice for

removal already issued by respondents to the petitioner of main petition to remove. Even bye-laws speak that for removal, the disciplinary committee constituted under the bye-law by the managing committee shall conduct an enquiry and give a report and after service to ask explanation and further recourse to be taken and in this case, there is no disciplinary committee constituted.

4) Leave about, the bye-law further speaks if the disciplinary committee is constituted and cease to function because of resignation or cessation of the period or non constitution of fresh disciplinary committee meantime for the interregnum period, the executive committee shall act as disciplinary committee. Even then, the bye-law no way dispense with the disciplinary committee to be constituted and enquiry to be conducted, if not constituted at least by the managing committee and admittedly, from the very show-cause notice, there is no disciplinary committee constituted and the said notice was issued by the vice-president for removal of President and other members including executive members authorizing him to remove in giving that notice. The so-called non-compliance of giving of notice and deposit of the amount, whether mandatory or directory, is the matter to be decided in the main *lis* apart from the reply is given to the show-cause notice before filing the claim, which shows before service, whether that reply can be served as a show-cause notice also to be considered in the main petition.

5) With these observations, the revision petition is disposed of, without prejudice to contest by both sides and trial

Court is directed to take up the matter and decide the main S.O.P. uninfluenced by the impugned order and order of this court, as early as possible by giving preference among other claims subject to case of other priorities, if any. No order as to costs.

6) Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.23.11.2016
knl

